COVID-19 AND EU STATE AID TEMPORARY FRAMEWORK

This update describes the exceptional measures taken by the European Commission to assist sectors which are severely affected by the coronavirus disease outbreak (COVID-19). It is relevant to all businesses which have been particularly hard hit including aviation, transport, tourism, hospitality and retail.

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State aid Temporary Framework

On 19 March 2020,[1] the European Commission adopted a State Aid Temporary Framework to enable EU Member States to use the full flexibility foreseen under EU State aid rules to support the economy in the COVID-19 outbreak. The purpose of the Temporary Framework is to enable Member States to ensure that sufficient liquidity remains available to businesses of all types and to preserve the continuity of economic activity during and after the COVID-19 outbreak.[2]

The State aid Temporary Framework is based on Article 107(3)(b) TFEU. Article 107(3)(b) TFEU enables EU Member States to compensate companies for the damage directly caused by exceptional occurrences, such as those caused by the COVID-19 outbreak. The European Commission has explicitly recognised that the COVID-19 outbreak qualifies as such an exceptional occurrence in the EU and that it has caused a serious disturbance to the entire EU economy.

To remedy such disturbance, the State Aid Temporary Framework provides for five types of State aid measures which are to be declared compatible with the internal market under Article 107(3)(b) TFEU:[3]

1. **Direct grants, selective tax advantages and advance payments:** Member States will be able to set up schemes to grant up to €800,000 to a company to address its urgent liquidity needs.
2. **State guarantees for loans taken by companies from banks:** Member States will be able to provide State guarantees to ensure banks keep providing loans to the customers who need them.
3. **Subsidised public loans to companies:** Member States will be able to grant loans with favourable interest rates to companies. These loans can help businesses cover immediate working capital and investment needs.
4. **Safeguards for banks that channel State aid to the real economy:** Some Member States plan to build on banks’ existing lending capacities, and use them as a channel for support to businesses – in particular to small and medium-sized companies. The State aid Temporary Framework makes clear that such aid is considered to be direct aid to the banks’ customers, not to the banks themselves, and gives guidance on how to ensure minimal distortion of competition between banks.
5. **Short-term export credit insurance:** The State aid Temporary Framework introduces additional flexibility on how to evidence that certain countries are non-marketable risks, thereby enabling short-term export credit insurance to be provided by the State where needed.[4]

The State Aid Temporary Framework therefore includes a number of safeguards to ensure that negative consequences to the level playing field in the Single Market are limited. By way of example, it links the subsidised loans or guarantees to businesses to the scale of their economic activity, by reference to their wage bill, turnover, or liquidity needs, and to the use of the public support for working or investment capital. The aid should therefore help businesses to weather the downturn and to prepare a sustainable recovery.

The State Aid Temporary Framework will be in place until the end of December 2020. With a view to ensuring legal certainty, the

1 https://ec.europa.eu/commission/presscorner/detail/en/ip_20_496

2 The European Commission is considering amending the State Aid Temporary Framework by adding aid measures to support companies that develop, test and produce much needed products to fight the coronavirus, such as vaccines, medical devices and protective equipment. https://ec.europa.eu/commission/presscorner/detail/en/statement_20_551

3 https://ec.europa.eu/competition/state_aid/what_is_new/sa_covid19_temporary-framework.pdf

4 On 27 March 2020 the European Commission decided to amend the Annex to the short- term export-credit Insurance Communication to temporarily remove all countries from the list of “marketable risk”. In practice, this means that State insurers will be able to step in and provide insurance for short-term export-credit risk for all countries, without the need for the EU Member State in question to demonstrate that the respective country is temporarily “non-marketable”

European Commission will assess before that date whether an extension is required.

Communication on a Coordinated Economic Response to the COVID-19 outbreak

On 13 March 2020,[5] the European Commission adopted a Communication on a Coordinated Economic Response to the COVID-19 outbreak setting out the various other possibilities already available to EU Member States to mitigate the socio-economic impact of the COVID-19 outbreak in line with EU State aid rules.

The State aid options available to EU Member States include:

- **Non-selective measures -** State aid is potentially unlawful if it benefits one economic undertaking or class of undertakings in a competitive market. Non-selective measures, which benefit all, will not generally offend the regime and may include general wage subsidies, suspension of payments of corporate and value added taxes or social contributions. These measures fall outside the scope of State aid control and can be put in place by EU Member States immediately, without involvement of the European Commission.
- **Financial support to individuals -** State aid is potentially unlawful only when targeted at businesses/ undertakings. Broadly, the State aid regime is not concerned with public money being passed to individuals or consumers. State repayment of, for example, "cancelled services or tickets that are not reimbursed by the operators concerned" will fall into this category. These measures also fall outside the scope of State aid control and can be put in place by EU Member States immediately, without involvement of the European Commission.
- **Low value aid or *de minimis* aid -** Aid of up to 200,000 Euros to an undertaking in any three year period from any public sector source is permitted as it is not deemed to have an impact on intra-EU trade. These measures can be granted by EU Member States without involvement of the European Commission.
- **General Block Exemption Regulation-** These measures can be put in place immediately without involvement of the European Commission.
- **Article 107(3)(c) TFEU-** State aid rules based on Article 107(3)(c) TFEU enable EU Member States, subject to the European Commission's approval, to meet acute liquidity needs and support companies facing bankruptcy due to the COVID-19 outbreak.
- **Rescue aid -** Some types of operating aid to business are potentially compatible with the State aid regime. There are specific provisions under the European Commission's Rescue and Restructuring Guidelines which will help in relation to supporting "companies coping with liquidity shortages and needing urgent rescue aid".
- **Article 107(2)(b) TFEU-** Article 107(2)(b) TFEU enables Member States, subject to the European Commission's approval, to compensate companies or specific sectors (in the form of schemes) for the damage suffered in exceptional circumstances, such as those caused by the COVID-19 outbreak. This includes measures to compensate companies in sectors that have been particularly hard hit (e.g. aviation, transport, tourism and hospitality) and measures to compensate organisers of cancelled events for damages suffered due to the outbreak.

The Commission is willing to provide guidance to EU Member States on State aid possibilities under EU rules and has put in place a swift approval process following the notification of national support measures by EU Member States.

To date, the European Commission has already approved various State aid measures as compatible with the internal market under Article 107(3)(b) TFEU and the specific conditions set out in the State Aid Temporary Framework.

Comment

The European Commission has recognised that the COVID-19 outbreak has caused serious disruption to the entire EU economy. The European Commission has immediately reacted by adopting urgent measures to assist EU businesses across the EU with a view to preserving their economic activity during and post the COVID-19 outbreak. It is too soon to know how long these exceptional measures will need to remain in place or whether in the longer term further flexibility of the EU State aid regime will be required.

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